IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ petition No 8713 of 1989

Date of decision: March 222007.

Shiv Darshan Lal Vasudeva

.....Petitioner

Vs.

Chandigarh Administration and another

.....Respondents.

Present: Mr.Gopal Mahajan, Advocate for the petitioner.
Mr. Deepak Sharma, Advocate for U.T. Administration.

JUDGMENT

M.M.Aggarwal, J.

This writ petition was earlier disposed of vide judgment of this Court dated 9th September, 1994 in view of the decision rendered in Civil Writ Petition No. 6331 of 1988. The decision in CWP No. 6331 of 1988 will show that four writ petition bearing Nos. 6329,7016 of 1988 and 7669 and 8713 of 1989 were disposed of vide one judgment dated 9.9.1994. The notices as well as orders passed by the respondents i.e. Chandigarh Administration were quashed and it was directed that if petitioner was still in default, then the Estate Officer shall have the option to take appropriate proceedings against the petitioner, in accordance with law.

It comes out that Chandidgarh Administration had filed various

civil appeals and then Hon'ble Supreme Court in Civil Appeal No. 9174 of 1995 had passed judgment dated 25th March, 2003 (copy Annexure P-26) after it was contended on behalf of the Chandigarh Administration that facts of the present case i.e. CWP No. 8713 of 1989 were not similar to the facts of case in CWP No. 6331 of 1988. That there was controversy between the parties as regards the payments, that was expected to be made by the respondent to the appellant Chandigarh Administration. The Hon'ble Supreme Court had remitted the matter to the High Court to dispose of this writ petition on merit in accordance with law taking note of the facts of the present case, contentions raised and the relevant rules.

The facts of the present case are that petitioner had participated in open auction held on 21.1.1978 and then took on lease one residential plot bearing No. 398 in Sector 38-A, Chandigarh for Rs.34,000/-. 10% had been paid at the time of final bid and an amount of Rs.5100/- i.e. 15% was to be paid within one month. Then petitioner had defaulted to make payment. Thereafter lease of that residential plot in favour of the petitioner was cancelled. He had enclosed bank draft of Rs.5100/- on 16.5.1978 but that was not accepted by the Estate Officer. He filed appeal which was disposed of. In appeal, the Chief Administrator, Chandigarh had passed order dated 21.11.1978, copy Annexure P-3, directing certain payments to be made by 16th February, 1979. Then notice, copy Annexure P-4 dated 13.2.1979, was issued that payment of Rs.8331/- be made by 15.2.1979. First instalment of Rs.9717/- (excluding ground rent) due on 21.1.1979, was also become payable on 10.2.1979. It appears that petitioner did not again deposit this amount in time. Then some revision against order of Chief Administrator dated 31.1.1979, cop Annexure P-5, was taken by the petitioner and vide notice copy Annexure P-6,

the petitioner was asked to come present before the Chief Administrator on 21.12.1979. He again sent two drafts i.e. Rs. 11,500/- and Rs. 5529/- dated 27.12.1979 to the Estate Officer, Chandigarh Administration. Chief Administrator had accepted the revision vide his order dated 5.1.1980 and had remitted the matter to Estate Officer. Thereafter the Estate Officer had returned the bank drafts and then made order dated 15.7.1981 copy Annexure P-10 cancelling the lease of the plot in question. Then petitioner had filed appeal under Rule 22 of the Chandigarh Lease Hold of Sites and Buildings Rules, 1973 against order dated 15.7.1981 of the Estate Officer, Chandigarh before the Chief Administrator which was dismissed vide order dated 19.4.1983 and revision filed was also dismissed by the Chief Commissioner, U.T. Chandigarh vide order dated 26.4.1989 copy Annexure P-15. Thereafter present writ petition was filed challenging all these orders.

On behalf of the petitioner, it was argued that petitioner had committed only one default in not depositing 15% of the amount in time and thereafter he had been ready to comply with the orders and had been sending bank drafts but respondents did not accept the same and petitioner cannot be said to be at fault. Whereas on behalf of the respondents- Chandigarh Administration, it was argued that even when Chief Administrator vide order dated 21.11.1978 had restored the site to the petitioner subject to certain conditions, still petitioner had failed to comply with those conditions and the respondents had acted within their powers and petitioner was not entitled to any relief.

From the order of the Hon'ble Supreme Court dated 25th March, 2003, vide which this case was remitted to this Court, I find that Hon'ble Supreme Court had dealt with some other appeals also and then had issued

directions to the respondents to pay lump sum amount towards cost of the site and had given certain period for that purpose and had further directed that if that payment was made within the time frame, then the authorities i.e. Union Territory Chandigarh shall regularise the allotment.

Here is a case where petitioner had got the plot in open auction held on 21.1.1978. Now a period of more than 29 years have passed. The order under challenge is of the year 1989.

During the course of arguments it had come out that this plot is still lying vacant and even after the allotment of the petitioner was cancelled and his appeal and revision was dismissed by the authorities, still it has not been allotted to any other person. It will not be proper at this stage to deprive the petitioner of the plot which he had taken on lease in open auction on 21.1.1978.

In the facts and circumstances of the case, it is directed that petitioner shall pay a sum of Rs.10,00,000/- (after adjustment of the amount already paid) to the respondents- Chandigarh Administration towards cost of residential plot No. 398 in Sector 38-A, Chandigarh. This amount be paid by the petitioner to the respondent-Administration within a period of four months from today and if the same is paid, then the plot shall stand restored to the petitioner and possession delivered. Amount paid will include lease money, if any, of all the period uptodate. No non-construction fee or penalty shall also be payable.

This writ petition is allowed in the above terms.

(M.M.Aggarwal)
Judge

March 22, 2007
raghav